

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant	:	Diaz et al.	)
			)
Reissue of			)
Patent No.	:	5,890,128	)
			)
Issued	:	March 30, 1999	)
			)
For	:	PERSONALIZED HAND	)
		HELD CALORIE COMPUTER	)

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**REISSUE APPLICATION DECLARATION UNDER 37 C.F.R. § 1.175 AND**  
**POWER OF ATTORNEY BY INVENTORS**

Assistant Commissioner for Patents  
 Washington, D.C. 20231

Dear Sir:

We, the undersigned inventors, hereby declare that:

1. Our residence, Post Office address and citizenship are stated below next to our names.

2. We believe that we are the original, first and joint inventors of the subject matter described and claimed in U.S. Patent No. 5,890,128 (hereinafter "the '128 patent"), issued March 30, 1999, and of the subject matter disclosed and claimed in the accompanying reissue application and preliminary amendment.

3. We have reviewed and understand the contents of the specification (including the claims) of the accompanying reissue application and preliminary amendment.

4. We acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

5. We believe that the '128 patent is partially inoperable because it claims less than we had a right to claim. Specifically, the insufficiency in the claims resides in the failure to present

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claims directed to an interactive personal nutrition and exercise management tool computing device comprising a housing sized and shaped to be held in a hand of a user, a computer processor within the housing, the computer processor operatively coupled to a memory, a user interface and a display; nutrition data for various food items stored in the memory and exercise data for various exercise activities stored in the memory; software stored in the memory, the software including a data retrieval portion and a display portion, the display portion and the data retrieval portion configured such that the user can select nutrition data for at least one of the various food items, the display portion and the data retrieval portion also configured such that a user can select exercise data for at least one of the various exercise activities, the software further including an accumulation portion and a burning portion, the accumulation portion configured to calculate nutrition accumulation during a time period, based at least in part on the nutrition data selected by the user, and the burning portion configured to calculate nutrition burned during the time period, based at least in part on the exercise data selected by the user.

In a similar manner, original claims fail to present claims directed to a method for tracking nutrition consumed by a user and nutrition burned by the user with an interactive personal nutrition and exercise management tool that includes a housing, a processor located within the housing and operatively coupled to a memory, a user interface and a display. The method comprising the steps of storing nutritional data for various food items in the memory, receiving a food item selection from the user for at least one food item, retrieving the nutritional data for the food item selection, accumulating the nutritional data for a plurality of food item selections over a time period, storing exercise data for various exercise activities in the memory, receiving an exercise data selection from the user for at least one exercise activity, retrieving the exercise data for the exercise data selection, receiving and storing personal data of the user in the memory, and calculating a nutritional burn rate over the period of time from the personal data and the exercise activity selection.

No original claim has a scope equal to that defined by reissue Claims 16-55.

6. All errors being corrected in the present reissue application and the accompanying preliminary amendment, up to the present time, arose without any deceptive intention on our part.

7. We hereby appoint the registrants of Knobbe, Martens, Olson & Bear, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California, 92660, Telephone (949)

Reissue of Patent No.: 890,128

760-0404, **Customer No. 20,995**, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

8. We have read and understand the foregoing statements of this Declaration. We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or patent issuing information.

Full name of first inventor: **H. Benjamin Diaz**

Inventor's signature

Date 3/27/01

Residence: P.O. Box 294, Brea, Ca 92822

Citizenship: **United States**

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Full name of second inventor: **M. Inez Genera**

Inventor's signature

Date 3/27/01

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Post Office Address: **Same as above**

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